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## Supreme Court Reconstituted Seven Months After Dissolution

by LADB Staff

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Seven months after it was dissolved, a new Ecuadoran Corte Suprema de Justicia (CSJ) was sworn in on Nov. 30. Thirty-one judges and 21 alternate judges were sworn in by Carlos Estarellas, president of the four-member commission appointed to choose the magistrates. International leaders like Organization of American States (OAS) secretary-general Jose Miguel Insulza, Comunidad Andina de Naciones (CAN) secretary Allan Wagner, and UN assistant secretary-general Angela Kane witnessed the ceremony. The ceremony was also attended by President Alfredo Palacio, who was appointed to finish out the term of former President Lucio Gutierrez (2002-2005), which ends in January 2007, and several other international monitors and diplomats.

Congress forced Gutierrez from office on April 20, five days after he disbanded the court and decreed a state of emergency, sparking massive street protests by Ecuadorans who believed he was manipulating the justice system to help political allies and increase his power. Gutierrez, with collaboration from a slim majority in the Congress, had previously replaced the entire court in December 2004 (see NotiSur, 2005-01-07 and 2005-04-22). Gutierrez and his allies argued that the court was politically dominated by former rightist President Leon Febres Cordero (1984-1988) and enjoyed impunity.

Gutierrez characterized the replacement of the court a "depoliticization." The action was a major event leading to the former Army colonel's fall from power. Gutierrez was arrested Oct. 14 after declining political asylum in Colombia and flying home, hoping to reclaim the presidency from Palacio, his ex-vice president (see NotiSur, 2005-11-11). His case may now go before the new CSJ, along with cases against former Presidents Abdala Bucaram (1996-1997) currently exiled in Panama and Gustavo Noboa (2000-2003), as well as ex-vice president Alberto Dahik, who is in Costa Rica. The court will probably also hear Gutierrez's complaint against Palacio that the latter perpetrated a coup against him.

Chilean Juan de Dios Parra, secretary of the Asociacion Latinoamericana para los Derechos Humanos (ALDHU), said the CSJ should now "vacate the more than 8,000 backed-up cases" that the court has not been able to try since its dissolution in April.

UN observer Carlos Ayala praised the CSJ staffing process as a success that could "be converted into an example for the hemisphere where we still see democracies in which the CSJs are elected with political influence and we haven't achieved the complete independence of the judicial power." Ayala thought the process had shown Ecuadorans that "it is possible [to get] independent, impartial, and efficient justice."

### *Only 2 women join final list of 31 judges*

Only two women, Pilar Sacoto and Ana Abril, joined the court after the committee deciding on the new judges used a points system that gave greater weight to certain forms of legal experience. Sacoto was rated as the twelfth-best of the 31 judges, while Abril was ranked as number 24. Women's advocates had said that the points system would discriminate against women, since they have only recently been integrated into the country's judicial establishment. The system, for example, gave four points for each year of professional practice after a 15-year minimum, something women's groups said would exclude women since they hadn't entered universities in large numbers until the late 1980s. They had asked that the *Comite Calificador*, the four-member qualifying committee charged with evaluating applicants to the court, use a different system that would allow more women to rise to the bench (see *NotiSur*, 2005-07-29).

OAS observer Sonia Picado highlighted the participation of women in the process, despite the committee's not following up on its previous commitment to take "positive action" to include at least six women on the court among the 52 best qualified. Only four women ultimately were allowed to join the group of 31 judges and 21 alternates. The committee also went with a formula that took in five applicants who had followed judicial careers, eight who had run private practices, and 18 who taught law in universities. Committee members had disagreed about the formula and had sought a more even distribution before deciding on this one.

The following is the list of judges who ascended to the court in order of the points they received from the qualifying committee, according to Quito daily newspaper *El Comercio*: Jose Troya, Hernan Salgado, Marco Guzman, Carlos Ramirez, Clotario Castro, Jorge Jaramillo, Jorge Endara, Teodoro Coello, Cesar Montano, and Joffre Garcia, who received the highest scores. Following that group was: Eduardo Franco, Pilar Sacoto, Roberto Gomez, Jaime Velasco, Alfredo Jaramillo, Daniel Encalada, Gaston Alarcon, Mauro Teran, Luis Abarca, Luis Canar, Hugo Larrea, and Alfonso Zambrano. Joining them were: Hernan Pena, Ana Abril, Ramiro Romero, Hector Cabrera, Jose Robayo, Ruben Andrade, Viterbo Zevallos, Ramon Jimenez and Ruben Bravo.

Three of the new justices, Troya, Coello, and Velasco, were also part of the court set up in 1997 and removed in December 2004 by Gutierrez and the Congress. UN monitor, OAS now calling for new Tribunal Constitucional UN special rapporteur Leandro Despouy, on hand to monitor and advise the judicial restructuring in Ecuador, and OAS head Insulza agree that the next major task facing the national judiciary is staffing the Tribunal Constitucional (TC), in charge of constitutional disputes.

Despouy urged that the TC be constituted without interference from the Congress. "All reform of the *Ley Organica del Poder Judicial* should be put on the march," said Despouy after the CSJ was sworn in. "These are not minor challenges, let's hope they are part of a process which may be the trigger for the reinstitutionalization of the country." Despouy said that the TC has not functioned in the past because party interests were too involved in its operations.

### *Palacio abandons push for popular referendum*

The reconstitution of the court is one victory for the beleaguered administration of President Palacio, amid a series of failures and conflicts with the Congress. The push that Palacio had made to hold a popular referendum on political and constitutional reform in Ecuador (see *NotiSur*, 2005-08-05)

has failed after strong opposition from the Congress. Minister of Government Galo Chiriboga announced on Dec. 6 that the initiative Palacio had presented to the Tribunal Supremo Electoral (TSE), the country's electoral authority, would not go forward. The president had asked the TSE to set up a Jan. 22 popular vote on the proposed reforms. The failure of Palacio's referendum push led him to ask his Cabinet to resign. The restructuring of his Cabinet would represent yet another shake-up in what has been a very unstable administration (see NotiSur, 2005-08-26 and 2005-09-23).

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